

BOARD OF APPEALS CASE NO. 4944

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BEFORE THE

APPLICANT: John & Evelyn Sexton

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ZONING HEARING EXAMINER

REQUEST: Variances to replace a non-conforming residential use and permit 2 dwellings on a single lot; 4113 Flintville Road, Darlington

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 7/14/99 & 7/21/99

HEARING DATE: August 25, 1999

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Record: 7/16/99 & 7/23/99

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ZONING HEARING EXAMINER'S DECISION

The Applicants, John & Evelyn Sexton, appeared before the Hearing Examiner requesting a variance to Section 267-34, Table II, of the Harford County Code, to permit the replacement of a residential use with less than the required 40 foot side yard setback, and a variance to Section 267-22(A) to permit more than one principal building to be used for residential purposes on a single lot in an Agricultural District.

The subject parcel is located at 4113 Flintville Road in the Fifth Election District. The parcel is identified as Parcel 60, in Grid 4-A, on Tax Map 13. The parcel contains 6 acres, m/l, all of which is zoned Agricultural.

Mr. John Sexton appeared and testified that he purchased the subject parcel approximately 28 years ago, at which time the parcel was improved by a single-family dwelling and a mobile home. Mr. Sexton said that the dwelling was totally destroyed as a result of a fire in March, 1999, and that he would like to replace the dwelling which was destroyed with a new ranch-type dwelling. The witness said that he would like to build in the same location and that it would be difficult to build elsewhere on the parcel because of the existing septic system, well, other out-buildings and vegetation. The witness said that denial of the variance would cause practical difficulty because he would be unable to rebuild a dwelling which was destroyed by fire. Mr. Sexton said if the variance is approved, he would maintain a 25 foot side yard setback and he said he did not feel the variance would be substantially detrimental to adjacent properties or materially impair the purpose of the Code because none of his neighbors have indicated to him that they were opposed to the request.

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Mr. Anthony S. McClune, Manager, Division of Land Use Management of the Department of Planning and Zoning, appeared and testified that the Department has reviewed the Applicants' request and that when the original Zoning Ordinance was enacted in 1957, the parcel was improved by a dwelling, which was destroyed by fire, and a mobile home. Mr. McClune said that the replacement of the second dwelling requires a variance as well as a variance to the required 40 foot side yard setback. Mr. McClune went on to testify that the granting of the variance will alleviate practical difficulty to the Applicants and that the Department was of the opinion that the requested variances should not adversely impact the adjacent land uses or be detrimental to the intent of the Zoning Code.

CONCLUSION:

The Applicants are requesting a variance to Section 267-34, Table II, of the Harford County Code, which requires a 40 foot side yard setback in the Agricultural District. The Applicants are also requesting a variance to Section 267-22(A), which provides:

“Separate lot requirements. Except as otherwise permitted by this Part 1, not more than one principal building used for dwelling purposes shall be permitted on any single lot. Establishment of a building with separate dwelling units for rental, cooperative or condominium purposes or as continuing care retirement community on a single lot shall not violate this requirement.”

The uncontradicted testimony of the Applicant and Mr. Anthony McClune, Manager, Division of Land Use Management for the Department of Planning and Zoning, was that the subject parcel was improved by a single-family dwelling and mobile home when the original Zoning Ordinance was adopted in 1957. In March, 1999, a fire destroyed the single-family dwelling on the parcel. The Applicants are requesting a variance to the side yard setback of 40 feet and are proposing a 25 foot side yard setback. The Applicants are also requesting a variance to allow a second dwelling on the parcel.

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It is the finding of the Hearing Examiner that the subject parcel is unique since it has contained two non-conforming residences prior to the enactment of the original Zoning Ordinance in 1957. It is, further, the finding of the Hearing Examiner that denial of the variance will cause practical difficulty because the Applicants will be unable to rebuild a dwelling which has existed on the parcel for at least 40 years. Further, it is the finding of the Hearing Examiner that approval of both variances will not be substantially detrimental to adjacent properties or materially impair the purpose of the Code.

Therefore, it is the recommendation of the Hearing Examiner that the variance to reduce the side yard setback from 40 feet to 25 feet to allow the Applicants to rebuild on the existing foundation and the variance for the second dwelling be approved, subject to the following conditions:

1. That the Applicants obtain all necessary permits and inspections for the new dwelling.
2. That the Applicants shall not reduce the setbacks of the original non-conforming use.

Date

9/21/99

Lee A. Hinderhofer

L. A. Hinderhofer
Zoning Hearing Examiner